IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

RSA.No. 525 of 2007()

AS.270/2003 of ADDL.DISTRICT COURT (ADHOC)-III, THALASSERY
OS.3/2002 of SUB COURT, PAYYANNUR

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: APPELLANT/APPELLANT/DEFENDANT:

P. NARAYANAN, S/O. VATTYAN,
AGED 44 YEARS BUSINESS,RESIDING AT PUTHUKKAL HOUSE
HOUSE NO.242, WARD NO.8, ERIPURAM,CHENGAL DESOM,
P.O. PAYANGADI, KANNUR.

BY ADV. SRI.K.P.HAREENDRAN

RESPONDENTS: RESPONDENT/PLAINTIFF:

P.P. PAVITHRAN, S/O.P.V.KUNHIKANNAN,
AGED 46 YEARS, BUSINESS, RESIDING AT PAVITHRAM,
KEECHERI, KALLYASSERI AMSOM, KEECHERI DESOM,KANNUR

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 09/08/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Order on I.A.No.1118/2007 in R.S.A.No.525/2007

9.8.07 Dismissed Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. to Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A NO. 525 OF 2007

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Dated this the 9th day of August, 2007

JUDGMENT

The defendant in O.S.3/2002 on the file of Sub Court, Payyannur is the appellant. Plaintiff is the respondent. Respondent instituted the suit seeking a decree for realisation of Rs.1,07,486/- with interest at 12% per annum from 22.10.01. According to respondent, along with the appellant, he was conducting a medical shop on a partnership basis by name Amritha medicals from 2.10.2000 and due to difference of opinion at the intervention of mediators, they decided to start separate business on 22.6.2001 and appellant agreed to pay Rs.1,07,486/- towards the share of the respondent on or before 22.10.2001 and also agreed to discharge all the other liabilities of the firm so that he could run that shop as his own and as the appellant could not pay the amount within the time stipulated, a fresh agreement, Ext.A1 was executed

on 2.7.2001 with a stipulation to issue a cheque for discharge of Rs.1,07,486/- and also issued original of Ext.A2 post dated cheque agreeing to pay the amount and respondent was ready and willing to handover the drug licence to the appellant immediately on payment of the amount covered by the cheque, but appellant did not pay the amount and respondent presented cheque for encashment. It was dishonoured for insufficient funds. Respondent sent a notice dated 20.10.2001 demanding the amount covered by the cheque. Appellant sent a reply raising false contentions and therefore suit was instituted for realisation of the amount. Respondent has also initiated proceedings under section 138 of Negotiable Instruments Act separately. Appellant resisted the suit admitting the partnership business as well as the agreement. But it was contended that respondent did not take any preliminary steps to transfer the drug licence in the name of the appellant and appellant never intended to cheat the respondent and he has

discharged the outstanding liability of Rs.13784/- as provided in Ext.A1 agreement. It was also contended that respondent has not given the account of medicine worth Rs.50,000/- and at the time of separation of the partnership business respondent insisted to issue a cheque as security and therefore the cheque was issued as security and eventhough appellant demanded to transfer of drug licence in his name, respondent did not do so and he is not in a position to run the business and he sustained a loss and so respondent is not entitled to the decree sought for.

2. Learned Sub Judge on the evidence of PW1, Dws.1 and 2 and Exts.A1 to A5 found that under Ext.A1, partnership business was discontinued and appellant was permitted to run the business by paying 1,07,486/- being the share of the respondent and towards that payment Ext.A2 cheque was issued which on presentation was dishonoured for want of sufficient funds and therefore respondent is entitled to realise the amount with interest and

the suit was decreed. Appellant challenged the decree and judgment before District Court, Thalassery in A.S.270/2003. Learned Additional District Judge on reappreciation of evidence confirmed the findings of learned Sub Judge and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard.

4. The argument of learned counsel was under Ext.A1 agreement respondent has to transfer the drug licence in favour of the appellant to enable him to run the business and inspite of request it was not done by the respondent and therefore appellant could not enjoy the benefit provided under Ext.A1 and so he is not liable to pay the amount and hence the decree and judgment are unsustainable. Learned counsel also argued that Ext.A1 does not provide for payment of interest and courts below should not have granted interest and in any case interest at 12% from the date of the

cheque is unsustainable.

5. On hearing learned counsel, I do not find any substantial question of law involved in the appeal.

6. Appellant and respondent were running a medical shop as a partnership firm by name Amritha Medicals from 2.10.2000. Because of difference of opinion they decided to discontinue the partnership business. Appellant was permitted to run the business after paying the share of the respondent. The share due to the respondent was fixed at Rs.1.07,486/-. Ext.A1 agreement was executed stipulating the provisions. Under Ext.A1 appellant admitted that he is liable to pay Rs.1,07,486/- and will pay that amount on or before 22.10.2001. Eventhough appellant had earlier promised to pay the amount before the earlier period it was not paid. So a post-dated cheque was issued as provided in Ext.A1 agreement to enable the respondent to encash the cheque, if appellant fails to pay the amount before that date.

The original of Ext.A2 cheque when presented was dishonoured for want of sufficient funds. Eventhough respondent sent Ext.A4 notice demanding the amount covered by the cheque, the amount was not paid. The suit was filed thereafter. The case of appellant is that as the respondent did not take steps to transfer the drug licence, he could not run the business and so he is not liable to pay the amount. Appellant had not even sent a notice demanding the transfer of the drug licence. If at all appellant sustained any loss, his remedy is to seek damages separately and he is not entitled to contend that he is not liable to pay Rs.1,07,486/- as agreed to be paid under Ext.A1. The courts below rightly appreciated the evidence and found that appellant is liable to pay the amount and gratned a decree.

7. Then the only question is with regard to interest. True, Ext.A1 does not provide for payment of interest. But that does not mean that appellant is not liable to pay interest. It is

clear from Ext.A1 that the amount due is under a commercial transaction. In such circumstance, the granting of interest at the rate of 12% from the date of the cheque cannot be said to be illegal. As no substantial question of law is involved in the appeal, appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006